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78,137/RLO

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: Paz-Pujalt, et al. )  
Serial No.: 09/131,710 ) Examiner:  
Filed: August 10, 1998 ) M. Grendzynski  
For: RECEIVER HAVING HYDROPHILIC ) Art Unit:  
RECEIVING SURFACE ) 1774

APPEAL UNDER 37 CFR §1.191

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JUL 23 2001  
TC 1700

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APPEAL BRIEF

Assistant Commissioner for Patents  
Washington, D.C. 20231  
Box AF

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JUL 23 2001  
TC 1700

Dear Sir:

Having filed a Notice of Appeal, Appellants hereby submit their Appeal Brief in triplicate.

Real Party in Interest

The real party in interest is the Assignee, Eastman Kodak Company, 343 State Street, Rochester, New York.

Related Appeals and Interferences

There are no related appeals and interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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### Status of Claims

Claims 1 and 2 are pending and are finally rejected under 35 U.S.C. Section 103(a).

### Status of Amendments

In response to the Office Action mailed September 12, 2000, an amendment mailed December 20, 2000 was entered to overcome a rejection under 35 U.S.C. Section 112. No further amendments to the claims were requested. Several papers were filed with remarks urging allowance of the application.

### Summary of Invention

The invention provides a new receiver sheet that bears a picture of a person on the image-receiving layer and receives a water-based ink image, such as a stamped image, on an upper hydrophilic layer. With reference to Fig. 4, the receiver sheet has an image receiving structure 50 that has a support 56 of paper or plastic. On the support 56 is an image-receiving layer 60. That layer receives images from a colorant donor element 14. A clear hydrophilic layer 80 is formed over the information-receiving layer 60. In operation, an image is formed on the information-receiving layer 60 in a thermal printer. As the printed image on the support exits the printer 82, the printed support receives the hydrophilic layer 80. If the printer uses dyes to form the image, a barrier layer 58 is put between the support 56 and the image-receiving layer 60 to prevent dye from bleeding into the support. The hydrophilic layer 80 is able to receive a second, water-based image.

### Reference to Specification

Claim 1	Page 4, lines 12-19.
Claim 1	Page 5, line 21 – page 6, line 4.
Claim 2	Page 4, lines 12-19.
Claim 1	Page 5, line 21 – page 6, line 4.

### Issues

Are claims 1 and 2 patentable over the references the combination of the references made in the final rejection.

### Grouping of Claims

Claims 1 and 2 are independent and shall be separately argued.

### Argument

#### The Final Rejection

Applicants request that the Board reverse the rejection and order the application to be allowed over the art of record.

The rejection of record in the final office action of September 12, 2000, reads as follows

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodager et al. [US 5,984,467]. Applicants claim an article comprising, in order, (1) a support; (2) a printed layer, and (3) a hydrophilic layer capable of receiving a water-based image. Bodager disclosed ink jet media comprising (1) a secondary substrate, an ink-receiving layer, a water-absorbing layer. *See* col. 13, lines 1-0. The secondary substrate is equivalent to applicants' support. The ink-receiving substrate is equivalent to applicants' printed layer – it holds pigment. *See* col. 4, line 35 through 5, line 5-7. the water-absorbing layer is equivalent to applicants' hydrophilic layer – it comprises gelatin. *See* col. 4, line 9.

#### Bodager 5,984,467

The reference concerns an ink jet media for providing a waterproof image. The media has, in the following order, a *first* support 1, a water-absorbing Layer 2, and an ink-receiving Layer 3. When a water-based ink image 4 is applied to Layer 3, it holds the ink pigment and passes the water to the Layer 2. A *second* support Layer 5 is put over the inked Layer 3. Then the first support Layer 1 and the hydrophilic Layer 2 containing the water are discarded.

The rejection finds that the claimed sequence of layers and the layers themselves are obvious in view of Bodager. The rejection reads the Layers 5, 3, 2 on Applicants support, ink-receiving and hydrophilic layers. In what may be an alternate rejection, at times the rejection finds that Bodager's ink-receiving layer is hydrophilic and that water held in the water-

absorbing layer is *recorded information*.

This Brief will demonstrate that:

Bodager fails to show a barrier layer;

the claimed sequence of layers is patentably different from the sequence of layers in Bodager;

the rejection misinterprets Bodager;

water is not “recorded information” and

the application should be passed to issue.

#### Argument 1 Claim 2 is Patentable

The rejection fails to identify any element in Bodager that corresponds to the barrier layer of Claim 2. Although Claim 2 has been rejected, no citation is made to a barrier element in Bodager and Bodager is not combined with another reference to reject Claim 2. Accordingly, Claim 2 is patentable over the art of record. The other limitations in Claim 2 are identical to Claim 1. For the reasons discussed below, the remaining elements in Claim 2 in their claimed sequence are not shown or suggested by the art of record.

#### Argument 2 When Correctly Interpreted, The Bodager Reference Does Not Show The Claimed Order of Layers.

The rejection under 35 U.S.C. Section 103(a) is clearly erroneous because Bodager teaches a substantially different layered order. Applicants urge the Board to construe Bodager consistent with its express disclosure and apply Layers 1, 2 and 3 to the claims.

Applicants claim an article comprising, in order, a support covered with an information-receiving layer that is covered with a water-absorbing (hydrophilic) layer capable of receiving a water-based image. There is no dispute about these elements or their order. The final rejection of September 12, 2000 recites the same elements and the same claimed order of elements. See OA 9/12/00, page 2, paragraph 4. That order of layers places the hydrophilic layer (water absorbing) *over* the image receiving layer, and the image receiving layer *between* the upper hydrophilic layer and the lower support layer.

The structure of Bodager Fig. 1A and 1B has the hydrophilic and ink-receiving layers reversed. Bodager has the following layers in the following order: a first support Layer 1, a water absorbing (hydrophilic) Layer 2, and an ink (image) receiving Layer 3. In Bodager, a water-based ink image is applied to layer 3. That layer holds the ink (and thus becomes an image or first image layer) and the water passes through to layer 2, a water-absorbing layer (hydrophilic) that is subsequently discarded.

Applicants contend that a reasonable interpretation of Bodager would rely upon the three layer structure shown in Figs. 1A and 1B and not the four-layer structure of Fig. 1C that contains Layer 5. The claims are clearly patentable over the three layer structure. The following arguments deal with the four layer structure.

Argument 3 Layers 1 and 5 Prevent Layer 2 From Receiving an Image.

The rejection interprets Layers 5, 3, 2 as corresponding to the claimed layers. However, even with that erroneous interpretation, Bodager still does not show the invention.

Although the claims are open ended, the express limitation of being able to receive a water-based colorant image cannot be ignored. The corresponding layer of Bodager, Layer 2 of the structure formed by layers 1,2,3, and 5, cannot receive an image. Layers 1 and 5 prevent Layer 2 from receiving an image. Layer 2 of Bodager as shown in Fig. 1C cannot receive a water-based colorant image. Layer 2 lies between support Layers 5 and 1 and those layers prevent Layer 2 from being able to “receive a water-based colorant image.” There is no suggestion in Bodager to remove Layer 1 and leave Layer 2. To the contrary, Bodager removes both and discards them as waste..

Argument 4 Ink-Receiving Layer 3 Prevents Layer 2 From Receiving an Image.

At times the rejection asserts that Layer 2 (Bodager’s water-absorbing layer) corresponds to Applicants information receiving layer and that Layer 3 (Bodager’s ink layer) is a hydrophilic layer. In the Office Action of January 19, 2001, the rejection states that the water-absorbing layer of Bodager meets the “recorded information” limitation of the claims. In the Office Action of March 20, 2001, the rejection states that the ink-receiving layer of

Bodager is hydrophilic and meets the limitation of the last element of the claims. This appears to be an alternate rejection and it too is erroneous.

Layer 2 cannot receive and does not receive water-based colorants. Bodager points out that superior Layer 3 holds the pigment (color) and lets the water and alcohol components pass to Layer 2. The only possible image in Layer 2 is the wastewater that remains after the ink jet printing. The color of the pigment is removed. Indeed, Layer 3 that captures and holds the pigment (color) precludes Layer 2 from receiving an image.

Argument 5 The Water in Bodager's Upper Layer is not *Recorded Information*.

The rejection asserts that Layer 2 holds *recorded information* in the form of wastewater. That interpretation is clearly erroneous. In Bodager, Layer 2 is a water-absorbing layer. It holds the water from the ink whose pigment was left behind in Layer 3.

The rejection finds that water affects optical properties such as reflection of light and that the water absorbed by Layer 2 constitutes *recorded information*. Thus, the rejection reads the *recorded information* limitation of the claims onto Layer 2. The rejection interprets "recorded information" to mean "any stored data, or any discontinuous coating which alters the optical property of the medium" and found that Bodager had a water-absorbing layer that receives water and other ink components. It reasons that Bodager's water-absorbing layer has its optical properties altered by the received components and thus met his broad interpretation of "recorded information."

Applicants disagree. This is an obvious-type rejection and no reference of record shows that water is used by Bodager (or anyone else) to record information. (The term *information* implies an ordered arrangement of indicia, not a wet spot on a piece of paper.) Bodager uses a water-absorbing layer to soak up wastewater and other elements left over from the ink jet printing operation. Bodager is silent about using Layer 2 as a layer for recording information. Indeed, Bodager cares so little about Layer 2 that he expressly teaches discarding it. It is unreasonable to interpret a wet sheet of waste material as an information-bearing layer.

Assume for the sake of argument that the water drops passed to Layer 2 may have an initial order that corresponds to the indicia of pigment captured in Layer 3. Also, recall that

Layer 2 is a water-absorbing layer. As such, the water from Bodager's ink is wholly taken up and made part of Layer 2, just as a sponge soaks up water. See "absorb" at <http://m-w.com>. Even if one structures indicia with water, absorbent material destroys the structure of the indicia by soaking up the water that forms the indicia. Any *recorded information* in water indicia characters is destroyed and *cannot be reproduced*.

A wet sheet of paper does not *record* information. All one can tell from wet paper is that it is wet. If the letters W – E – T are written on a water-absorbing material, the material absorbs the water and the water word "wet" disappears. Words of water on absorbent material are neither recorded nor reproducible.

Argument 6 The Dictionary Definition Relied Upon By the Rejection Does Not Support Interpreting Water as *Recorded Information*.

During examination Applicants challenged the lack of support for the broad interpretation, *supra*, of *recorded* information. In response, the Examiner cited a definition of "information" found at an Internet site for the *Merriam-Webster's Collegiate Dictionary*, <http://www.m-w.com/>. The Examiner correctly quoted the definition of *information* as the communication or reception of knowledge or intelligence such as data.

The Examiner further said that *record* means "to cause something (such as sound, visual images, or data) to be registered onto something." Advisory Action of March 20, 2001, page 2. That definition is incomplete. The full definition reads as follows: "to cause (as sound, visual images, or data) to be registered on something (**as a disc or magnetic tape**) **in reproducible form**." (Emphasis added.) The rejection omitted the bolded portion of the definition.

Applicants assume that the omission of the bolded portion of the definition of "record" was inadvertent. Nevertheless, when the full definition is considered, one sees that the reference fails to support the rejection and does not show or suggest the invention. Wet words on water absorbent material are not reproducible. Bodager provides no more than drops of water on a piece of paper. The structure in Bodager that receives the water drops is neither a disc nor magnetic tape. There is no indication in Bodager that the purported "water



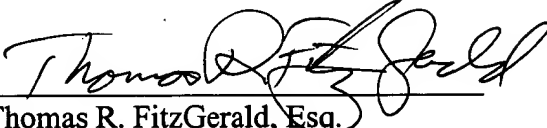
data" can be reproduced.

Conclusion

Applicants submit that the rejections of record are erroneous and that the rejection should be reversed.

Respectfully submitted,

Date: 7/16/01

  
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Thomas R. FitzGerald, Esq.  
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## Appendix

### Claims 1 and 2

1. A receiver for receiving a water-based colorant image transferred by a stamp, comprising:
  - (a) an image receiving structure having:
    - (i) a support; and
    - (ii) an information receiving layer which contains recorded information, such information receiving layer being formed over the support and
  - (b) a clear hydrophilic layer formed over the information receiving layer and selected so as to be able to receive a water-based colorant image.
2. A receiver for receiving a water-based colorant image transferred by a stamp, comprising:
  - (a) an image receiving a structure having:
    - (i) a support;
    - (ii) a barrier layer formed over the support; and
    - (iii) an information receiving layer which contains recorded information, such information receiving layer being formed over the barrier layer; and
  - (b) a clear hydrophilic layer formed over the information receiving layer and selected so as to be able to receive a water-based colorant image.